

# ARKANSAS SUPREME COURT

No. 07-1139

CARL DAVIS, JR.  
Petitioner

v.

LARRY NORRIS, DIRECTOR,  
ARKANSAS DEPARTMENT OF  
CORRECTION  
Respondent

Opinion Delivered      January 10, 2008

PRO SE MOTION FOR BELATED  
APPEAL AND RULE ON CLERK  
[CIRCUIT COURT OF LEE COUNTY,  
CV 2006-127, HON. HARVEY L.  
YATES, JUDGE]

MOTION TREATED AS MOTION FOR  
RULE ON CLERK AND DENIED.

## PER CURIAM

In 1991, petitioner Carl Davis, Jr., was found guilty by a jury of aggravated robbery and sentenced as a habitual offender to seventy years' imprisonment. We affirmed. *Davis v. State*, CR 91-290 (Ark. June 22, 1992) (per curiam).

In 2006, while incarcerated in Lee County, petitioner filed in the circuit court in that county a pro se petition for writ of habeas corpus, claiming that his 1991 conviction was illegal on its face. The circuit court dismissed the petition without a hearing on June 18, 2007, and petitioner timely filed in the circuit court a notice of appeal from that order on June 27, 2007. He tendered a partial record on appeal to this court on October 30, 2007, which was not within ninety days of the date of the notice of appeal as required by Ark. R. App. P.—Civ. 5(a).

Now before us is petitioner's pro se motion for belated appeal and rule on clerk in which petitioner seeks leave to lodge the record belatedly and proceed with an appeal of the order. A motion for belated appeal will be treated as a motion for rule on clerk if a notice of appeal is timely

filed. *See Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (per curiam); *see also Muhammed v. State*, 330 Ark. 759, 957 S.W.2d 692 (1997) (per curiam). We thus treat the motion as one for rule on clerk pursuant to Ark. Sup. Ct. R. 2-2(b).

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). With that right, however, goes the responsibility to timely file a notice of appeal and tender the record to this court within the time limits set by the rules of procedure. If a petitioner fails to tender the record in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). The fact that a petitioner is proceeding pro se in itself does not constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam); *see also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam).

Here, petitioner claims that due to his indigent status, he “requested” that the record on appeal be “provided” to this court at public expense, although the partial record tendered did not indicate that petitioner was granted indigent status on appeal. Regardless of whether petitioner was found to be an indigent for appeal purposes, when proceeding pro se, it is not the responsibility of the circuit clerk, circuit court, or anyone other than the petitioner to perfect an appeal. *Sullivan, supra*. Petitioner has stated no good reason for the late tender of the record.

Motion treated as motion for rule on clerk and denied.